



# SHORELAND ZONING NEWS

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Spring 2006

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## Please Share

For over 15 years, the Shoreland Zoning News has been helping town officials better understand the common issues surrounding shoreland zoning administration and enforcement. At least that is the feedback we've been getting. Unfortunately, we also hear that the News is not getting to everyone who would like to see it.

We keep our costs and mailing list manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board and code officer. If you are the contact person, please make sure the newsletters reach the other town officials.



## NEW STATE GUIDELINES, FINALLY!

If you have not yet heard, on February 16th the Board of Environmental Protection (BEP) approved amendments to the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, Chapter 1000.

The department has worked on the proposed Guideline changes for the past several years as you probably know from reading many previous issues of the *Shoreland Zoning News*. What began as an attempt to make a moderate number of changes blossomed into many more proposed changes than originally expected.

To those of you that provided comments during this process, thank you for your participation and contribution.

We have received a number of calls so far from folks seeking specific answers pertaining to the enactment of the new Guidelines. We will start by sharing the most common questions and the answers to them.

**Q. When will the Guidelines take effect?**

**A.** The new Guidelines will be effective on May 1, 2006.

**Q. Which of the new changes will be mandatory and which will be optional?**

**A.** There have been many changes to the Guidelines and the size of this newsletter does not afford us the proper space to fully address this. However,

the department does intend to provide municipalities with this information around the time the new Guidelines take effect. Also in this issue we will highlight a number of the bigger changes and will inform you of the mandatory/optional aspect of those changes.

**Q. How much time will municipalities have in order to adopt the required changes within the new Guidelines?**

**A.** Although the official deadline is still to be established by Board of Environmental Protection, we expect that municipalities will have approximately 2 years from the effective date of the new Guidelines. This would allow for municipalities with a town meeting form of government to have two cycles of town meetings to adopt the changes.

**Q. When/how can I get a copy of the new Guidelines?**

**A.** By the time you read this newsletter, it will be filed with the Secretary of State, and be at the printers. All municipal offices will be mailed a copy of the new Guidelines as well as other interested parties that have requested a copy. The document can also be found on our website. If you do not have access to our website and you know you are not currently on our mailing list, please contact us for a copy, and specify whether you would like a hard copy or electronic

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copy. The website has both a 'strike-out and underlined' formatted version clearly showing the changes made (Chapter 1000 (showing amendments)), and also a clean version of the new Guidelines without the specific changes highlighted (Chapter 1000 (amendments incorporated)). The website address to these documents is: <http://www.state.me.us/dep/blwq/docstand/szpage.htm#rule>.

Also, we are preparing to provide regional informational meetings to discuss the changes and to answer questions that municipal officials may have regarding the local implementation of the changes. It is likely that these meetings will be held later in 2006, as we get closer to the 2007 town meeting "season."

As always, if after reviewing the changes you have any questions or need clarification, please do not hesitate to contact us.



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## Highlights of the Recent Guideline Changes

There have been many changes to the Guidelines as a result of the recent rulemaking process, but a majority of them were designed to merely provide clarity to the original language. As issues arise or challenges to the language are made, we try to earmark areas within the language that may be weak for future clarification, which is the case with many of the new changes.

Otherwise, there were a number of relatively significant changes that are certainly noteworthy now. The following is a glimpse of some of these changes along with a brief explanation.

- One of the primary reasons for amending the Guidelines is the need to include the legislatively approved state-wide timber harvesting standards. These standards, now within the Guidelines, provide municipalities with various options for regulating timber harvesting in shoreland areas. Our last edition of the *Shoreland Zoning News* clarifies the new standards so we will not expound on it any further in this edition.
- The amendments also establish a new General Development District that requires a minimum water body setback of 75 feet. This will ensure that new commercial and industrial development that is not water dependent will maintain vegetative buffers. It is still possible that an area of shoreline with a high density of existing commercial development within 75 feet of the water, and not currently zoned as a general development district, can be zoned with the original general development district standards (25' setback). We now have two general development districts in the new Guidelines, one for those situations noted above and the new standards for relatively undeveloped areas slated to become commercially or industrially developed.
- Another amendment will require setbacks for new principal structures to be measured from the top of unstable and highly unstable coastal bluffs, rather than from the upland edge of the coastal wetland or maximum spring tide line. These bluff areas are identified on maps produced by the Maine Geological Survey (MGS) and are available for much of the State's coastline. We understand that MGS is still working on maps for areas far downeast and these may not be available for some time. This requirement will afford protection from mass movement of these bluffs and prevent pre-mature bluff movement or failure due to development near the edge of the bluff.
- The amendments include a change to the criteria for establishing a Resource Protection District. The Guidelines had formerly referenced "waterfowl and

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## Miscellaneous Notes From the SLZ Unit...

- Once again our Shoreland Zoning Unit is down a staff person. Tracey Thibault, our unit staffer in Bangor has recently left the department to pursue other career interests. We wish her the best of luck in her new job. We have now been authorized to re-fill this position. Hopefully the position will be filled by mid-May. In the meantime, folks in the Bangor region may call Rich Baker (287-7730) for assistance.
- There has also been more turnover in our Field Services & Enforcement Unit. Recently, Becky Maddox in our Augusta office transferred to our licensing unit and Chris Redmond from the Portland office relocated to the vacated Augusta position. We will again seek to fill the vacant Portland position.

wading bird habitat" ratings from a study done in 1973, more than 30 years ago. The new language now refers to the wetlands ratings as available on a GIS data layer provided by the Department of Inland Fisheries and Wildlife or DEP as of March 1, 2006. This will require some districting changes to zoning maps in some towns. Remember, landowners must be notified in writing when their land is being proposed to be placed in a Resource Protection District.

- There are new requirements for replanting of vegetation when a non-conforming structure is relocated.
- Now, a nonconforming structure must be relocated away from the water (greatest practical extent) when any permanent foundation is added to the structure. Previously, relocation was only necessary with new foundations that would serve as basements (frost walls and slabs didn't trigger the relocation requirement).
- The amendments also included the adoption of clearing standards that are more consistent with those required pursuant to the Natural Resources Protection Act.
- Lastly, we anticipate that the cover of the new Guidelines will remain the unattractive canary yellow color it has been for many years now.

As noted previously, there have been a number of other minor changes to the Guidelines as well. In addition, it is important to point out that the amendments recently adopted by the Board have changed from the earlier draft proposal from a year ago. This is due to changes made as a result of public comments received during the rulemaking process. One noteworthy change is that the proposed new trail standards that were in the original draft were eliminated. We intend to return to the table with the other interested parties to determine if it is feasible to include modified trail standards in future proposed Guideline changes.

We are working to finalize this process in the very near future and anticipate mailing a copy of the new Guidelines to all municipalities by May 1st. If you'd prefer to receive the Guidelines electronically, please contact us to share your e-mail address.



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### *CEO Shoreland Zoning Workshops*

The Guideline changes will be a significant portion of our 2006 CEO workshops held in May. Please contact us soon if you have any specific topics you wish to have addressed.

### *Reminder, reminder, reminder...*

- Code Enforcement Officer biennial reports are now past due. The Mandatory Shoreland Zoning Act contains a provision requiring all Code Enforcement Officers to submit these reports on a biennial basis by March 1st (even years) to the department. The reports must include a complete record of all essential transactions, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected. To date, we have only received just over half of the required reports. Please contact Rich Baker (287-7730) if you need a blank reporting form.
- As noted in previous editions of the Shoreland Zoning News, in 2005, the Legislature adopted a new law requiring towns to submit notice of a shoreland variance request to boards of appeals. The notice must contain a copy of the application for variance and must be submitted (according to the law) at least 20 days prior to the date that the board of appeals holds a hearing on the variance application. Although we do receive these sporadically from towns, we are not convinced that all towns are complying with this law. We expect this may be due to many towns not being aware of this requirement, hence the reminder.
- Now that we are in the midst of "town meeting season" please remember to submit any ordinance and map amendments that affect shoreland areas to the department for review. Remember, these amendments are not legally effective until the department approves them.



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### *We're Looking for Some Good Stories and Questions!!*

Have any good tales from the field? Nightmares from the courtroom? Questions that frequently arise? Feel free to contact us with these quips and we will consider sharing the stories in this newsletter in an effort to help others. The Shoreland Zoning News is intended to provide you with information to help you do your job!

**More Notes:**

We have not updated our *Shoreland Zoning News* contact list for several years now. As a result, we occasionally hear that the newsletter is not getting to everyone intended (CEO's, planning board, board of appeals, selectmen, council's, etc.) If you are no longer the appropriate contact person to receive this mailing, please contact us and we can update our contact list.

**Contact Us:**

Rich Baker, Coordinator, Augusta: 287-7730  
Bangor (currently vacant): 941-4116  
Marc Russell, Presque Isle 764-0477  
Mike Morse, Portland 822-6328

**Questions & Answers:**

Q. *Why have the shoreland zoning clearing standards been changed to restrict cutting or removing vegetation less than 3' in height and other ground*

*cover adjacent to all shoreland zoned resources instead of only great ponds and rivers that flow to great ponds?*

A. The Natural Resources Protection Act (NRPA) was amended several years ago to regulate the clearing of vegetation adjacent to natural resources that are not shoreland zone regulated. One of the standards in the NRPA regulations prohibits the removal of vegetation less than 3' in height or other ground cover. It is important for the two laws to be consistent where possible. In addition, scientists that study streams, rivers, and coastal and freshwater wetlands have realized that it is equally important to have these restrictions around all natural resources in order to retain a good buffer. These buffers adjacent to natural resources are vital in protecting water quality. They serve to filter contaminants such as soil particles and the nutrients they carry from runoff water flowing into these resources.



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